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ABSTRACT

Though not exhaustive, this report explains the substantive aspects of the Copyright Revision Act of 1976 that would be of interest to copyright proprietors and/or users of copyrightable works. The major part of the report deals with the subject matter and scope of copyright; topics discussed include fair use, reproduction by libraries and archives, ownership rights in lawfully made copies, exempt performances, cable television-secondary transmission, ephemeral recordings, sound recordings, recording rights in music, jukebox exemption, and public broadcasting. Other areas covered are the new scheme of statutory copyright, copyright ownership and transfer, the formalities necessary for enjoying the rights of copyright ownership, copyright infringement and remedies, manufacturing requirements in importation, the Copyright Royalty Tribunal, criminal offenses, and supplemental considerations. For quick reference, a summary of highlights from the Act is provided at the beginning. (JD)

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THE COPYRIGHT REVISION

ACT OF 1976

December 10, 1976

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SUMMARY OF HIGHLIGHTS

OF THE COPYRIGHT REVISION ACT OF 1976

Effective Date. Generally, the new legislation does not become effective until January 1, 1978. The present law remains in effect until then.

Single National System. Instead of the present dual system of protecting works under state common law before they are published and under the federal copyright statute after publication, the new law will establish a single system of statutory protection for all copyrightable works, whether published or unpublished.

Duration of Copyright. Under present law, the term of copyright is 28 years, renewable for a second term of 28 years. For works created on or after January 1, 1978, the new law provides a single term lasting for the author's life, plus an additional 50 years after the author's death. For works made for hire, and for anonymous and pseudonymous works, the new terms will be 75 years from publication or 100 years from creation, whichever is shorter.

For works already under statutory protection, the maximum total term of copyright protection is increased from 56 years (two 28-year terms) to 75 years. The new law retains the present first term of copyright of 28 years, renewable for a second period of protection, but it increases the length of the second period to 47 years. Copyrights in their first term as of January 1, 1978 must still be renewed to receive the full new maximum term of 75 years, but copyrights in their second term at any time between December 31, 1976 and December 31, 1977, are automatically extended up to the maximum of 75 years without the need for further renewal. This applies not only to copyrights less than 56 years old, but also to older copyrights that have previously been extended in duration by acts of Congress.

For unpublished works that are already in existence on January 1, 1978, the new act will generally provide

automatic federal copyright protection for the same life-plus-50 or 75/100-year terms prescribed for new works. Special dates of termination are provided for copyrights in older works of this sort.

The new act does not restore copyright protection for any work that has gone into the public domain.

Termination of Transfers. For transfers of copyright rights made on or after January 1, 1978, the new act generally permits the transferor or his successor in interest to terminate the transfer within a five year period commencing after 35 years. Termination is effectuated by serving written notice on the transferee within specified time limits. For transferred works already in their second 28-year term, a similar right of termination is provided with respect to the newly-added years of copyright protection which result from extending the present maximum term of copyright from 56 to 75 years.

Government Publications. The new law continues the prohibition in the present law against copyright in "publications of the United States Government" but clarifies its scope by defining works covered by the prohibition as those prepared by an officer or employee of the U.S. Government as part of that person's official duties.

Fair Use. The new law adds a provision to the statute specifically recognizing the principle of "fair use" -- the right to use copyrighted works (including unauthorized reproductions) for purposes such as criticism, comment, news reporting, and teaching, without liability for infringement -- as a limitation on the exclusive rights of copyright owners. It enumerates four factors to be considered in determining whether particular uses constitute fair use. This, however, merely constitutes an expression of legislative approval for what was previously a judicial doctrine.

Reproduction by Libraries and Archives. In addition to the provision for fair use, the new law specifies circumstances under which the making or distribution of single copies of works by libraries and archives for noncommercial purposes do not constitute a copyright infringement.

Copyright Royalty Tribunal. The new law creates a Copyright Royalty Tribunal whose purpose will be to determine whether copyright royalty rates established pursuant to (or by) the new act are reasonable and, if not, to adjust them; it will also in some circumstances determine the distribution of certain statutory royalty fees.

Sound Recordings. The new law retains the provisions added to the present copyright law in 1972, which accord protection against the unauthorized duplication of sound recordings. The new law does not create a performance right for sound recordings.

Recording Rights in Music. The new law makes a number of changes in the present system providing compulsory licensing for the recording of music. Among other things, it raises the statutory royalty from the present rate of 2 cents to a rate of 2 3/4 cents or 1/2 cent per minute of playing time, whichever amount is larger.

Exempt Performances. The new law removes the present general exemption of public performance of nondramatic literary and musical works where the performance is not "for profit." Instead, it provides several specific exemptions for certain types of nonprofit uses, including performances in classrooms and instructional broadcasting.

Public Broadcasting. Under the new act, public broadcasters of music and grapnic works will be entitled to a form of compulsory licensing for noncommercial transmissions under terms and rates prescribed by the Copyright Royalty Tribunal.

Jukebox Exemption. The new law removes the present exemption for performances of copyrighted music by jukeboxes. It substitutes a system of compulsory licenses based upon the payment by jukebox operators of an annual royalty fee to the Register of Copyrights for later distribution by the Copyright Royalty Tribunal to the copyright owners.

Cable Television. The new law provides for the payment, under a system of compulsory licensing, of certain royalties for the secondary transmission of copyrighted works on cable television systems. The amounts are to be paid to the Register of Copyrights for later distribution to the copyright owners by the Copyright Royalty Tribunal.

Notice of Copyright. The current law requires, as a mandatory condition of copyright protection, that the published copies of a work bear proper copyright notice. The new enactment continues the requirement of notice on published copies, but omission or errors will in the future not immediately result in forfeiture of the copyright, and can be corrected within certain time limits. Innocent infringers misled by the omission or error will be shielded from liability.

Deposit and Registration. As under the present law, registration will not be a condition of copyright protection. However, the new act provides several inducements for registration. For example, it will be a prerequisite to an infringement suit. Moreover, the remedies of statutory damages and attorney's fees will not generally be available for infringements occurring before registration. Prompt registration may even lighten the burden of copyright litigation, because the certificate of a registration made within five years of publication is prima facie evidence of the validity of the copyright and of the facts stated in the certificate.

Copies or phonorecords of works published with the notice of copyright that are not registered are required to be deposited for the collections of the Library of Congress, not as a condition of copyright protection, but under provisions of the law making the copyright owner subject to certain penalties for failure to deposit after a demand by the Register of Copyrights.

Manufacturing Clause. Nondramatic works in the English language must now be manufactured in the United States to have copyright protection here. The new act terminates this requirement completely after July 1, 1982. For the period between January 1, 1978 and July 1, 1982, it makes several modifications that will narrow the coverage of the manufacturing clause, will permit the importation of 2,000 copies manufactured abroad instead of the present limit of 1,500 copies, and will equate manufacture in Canada with manufacture in the United States.

Criminal Penalties. The criminal offenses defined under current law are carried over in the new legislation, although the maximum penalties are substantially increased. In addition to a fine and/or imprisonment, the new act mandates that upon conviction the court shall order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices or equipment used in the manufacture of the infringing items.

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I. INTRODUCTION

On October 19, 1976, President Ford signed into law the first major revision of the United States copyright statute since 1909.[1/] The need for reform was almost universally recognized; the present statute is basically the same as it was in 1909, despite the many technological developments in the interim which have affected the operation of copyright law. Indeed, during the past half-century a wide range of new techniques for capturing and communicating printed matter, visual images, and recorded sound have come into use, and the increasing use of information storage and retrieval devices, communication satellites, and laser technology suggests even greater changes in the future. These advances have generated new industries and new methods for the reproduction and dissemination of copyrighted works, and the business relations between authors and users have evolved accordingly. The new act, which generally takes effect on January 1, 1978, is intended to reflect these various developments and to encompass future technological innovation.

This memorandum will focus primarily upon those substantive aspects of the act that we believe are of interest to copyright proprietors and/or users of copyrightable works.

1/ See Copyright Revision Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541, amending 17 U.S.C. §§1 et seq. (Supp. V, 1975).

It is not, however, an exhaustive review of the new statute and should not be the sole predicate for business decisions.

II. THE SUBJECT MATTER AND SCOPE OF COPYRIGHT

A. What Can Be Copyrighted

Copyright protection is made available in the new legislation for works of authorship ". . . fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine." Thus, the existing requirement that a work be fixed in a tangible medium of expression is perpetuated. But under the new law, it makes no difference what the form, matter or medium of fixation may be -- whether it is in words, numbers, notes, sounds, pictures or any other graphic or symbolic indicia, or whether it is embodied in a physical object in written, printed, photographic, sculptural, punched, magnetic or any other stable form, so long as it is capable of perception directly or by means of any machine or device "now known or later developed." On the other hand, the definition of fixation would seem to exclude purely evanescent or transient reproductions such as those projected briefly on a

screen, shown electronically on a television or other cathode ray tube, or captured momentarily in the memory of a computer.

The act also seeks to resolve, through this broad definition of acceptable fixation, the status of live broadcasts -- sports, news coverage, live performances of music, etc. -- that are reaching the public in unfixed form but which are simultaneously being recorded by the transmitting organization. Once the new legislation becomes effective, it will make no difference whether the images and sounds to be broadcast are transmitted while simultaneously being recorded or first recorded (on a videotape, film, etc.) and then transmitted; in both situations, the recorded work will be considered a "motion picture" subject to statutory protection against unauthorized reproduction or retransmission of the broadcast.

Compilations[2/] and derivative works,[3/] as under the present law, will remain entitled to copyright protection.

2/ A compilation is a work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.

3/ A derivative work is a work based upon one or more pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.

However, the new act seeks to clarify the fact that copyright in a "new version" covers only the material added by a later author and has no effect on the preexisting material. It also clarifies the fact that while the Unites States Government is precluded from obtaining copyright protection[4/] it is not prohibited from owning copyrights transferred to it by assignment, bequest, or otherwise.

B. The Copyright Grant

The approach of the act is to set forth in broad terms and in a single statutory provision the exclusive rights of copyright. Then various (and sometimes overlapping) limitations, qualifications, and exemptions from the broad rights are defined in succeeding sections.

Five fundamental rights -- the exclusive rights to do and authorize (1) reproduction, (2) adaptation, (3) publication, (4) public performance, and (5) public display --

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4/ The House bill initially proposed one specific exception, authorizing government copyright for any publication of the National Technical Information Service. Because the Senate had not held hearings on this matter, it was deleted from the final version of the act. However, it is anticipated that hearings on this topic will be held during the next session of Congress.

are defined in the bill. These exclusive rights, which together comprise the so-called "bundle of rights" that is a copyright, are cumulative and may sometimes overlap. Each of the five enumerated rights may be subdivided and each exclusive right or subdivision thereof may also be owned and enforced separately.5/ However, these exclusive rights do not provide uniformly analogous protection to the copyright proprietor.

The rights of reproduction, adaptation, and publication extend to every kind of copyrighted work. Although these three rights are independent, they are closely related. A single act of infringement may simultaneously violate one or more of them, as when a publisher reproduces, adapts and sells copies of a person's copyrighted work as part of a publishing venture. Infringement takes place, though, so long as any one of these rights is violated.

5/ However, to prevent the possibility of multiple lawsuits, courts may require that written notice of the filing of an action for copyright infringement be served by the copyright owner on other persons having an interest in the copyright in litigation. The court may require the joinder, and must permit the intervention, of any person having or claiming an interest in the copyright.

In contrast, the right of public performance extends only to ". . . literary, musical, dramatic, and choreographic works, pantomines, and motion pictures and other audiovisual works and sound recordings." Unlike the equivalent provision now in effect, the exclusive right of public performance in the new bill is not limited specifically to performances which are "for profit." However, as described infra, several of the new statutory exemptions are cumulatively analogous to the existing "for profit" clause.

The right of public display is similarly defined in the new bill to be somewhat limited in scope. Only owners of copyrights in ". . . literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic or sculptural works, including the individual images of a motion picture or other audiovisual work . . ." are granted the exclusive right to display the copyrighted work publicly. Nevertheless, this represents the first explicit statutory recognition in American copyright law of an exclusive right to show a copyrighted work, or an image of it, to the public.

As defined in the new act, the concepts of public performance and public display appear to cover not only the initial rendition or showing, but also any further act by which the rendition or showing is transmitted or communicated

to the public. For example, a singer is performing when he sings a song; a broadcasting network is performing when it transmits the performance (whether simultaneously or from records); a broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers; and an individual is performing whenever he plays a phonorecord[6/] embodying the performance or even turns on a receiving set. Yet, although any act by which the initial performance or display is transmitted, repeated, or made to recur would itself seem to be a "performance" or "display" under the statute, it would not be actionable as an infringement unless it were done "publicly". And as described below, certain performances and displays, even if done publicly, are deemed not to constitute infringements of copyright.

6/ Phonorecords are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

By contrast, sound recordings are defined as works that result from the fixation of a series of musical, spoken, or other sounds (excluding motion picture soundtracks) regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

C. The Exclusive Rights of Copyright Owners Are Subject to Various Statutory Qualifications

Various statutory exceptions are engrafted onto the exclusive rights of copyright owners. These limitations, as described herein, range in scope from a qualified grant of immunity to all potential users, to four forms of compulsory licensing, to a narrow grant of absolute immunity for reproductions by certain libraries and archives.

1. Fair Use

One important exception codifies the doctrine of "fair use". Heretofore a judicial doctrine, the right to use copyrighted works for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, without liability for infringement, is now given express statutory approval.

In general, there are no concrete guidelines in this area and each case must be decided on its own facts.7/

7/ In order to provide concrete guidelines for teachers, the Conference Committee Report accompanying the new bill endorsed as part of the Committee's understanding of the meaning of fair use a document entitled "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions."

Nevertheless, four criteria are adopted in the act for determining whether a use is fair:

> (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

In addition, the new fair use provision appears to apply uniformly to photocopying and taping, as well to the older forms of reproduction.

2. Reproduction by Libraries and Archives

Another exception supplements the fair use provision by immunizing certain libraries and archives [8/] from liability resulting from the reproduction of various copyrighted works, whether for their own use or upon request. As a prerequisite to the benefit of this provision, a library or archives, or any of its employees acting within the scope of their employment, must reproduce or distribute not more than one

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8/ The provision is not intended to override a contractual arrangement (regarding copying) assumed by a library or archives when it obtained a work for its collections.

copy or phonorecord of a work at any one time. In addition, the reproduction or distribution must be made without any purpose of direct or indirect commercial advantage; the collection of the library or archives must be open to the public or available not only to researchers affiliated with the library or archives, but also to other persons doing research in a specialized field; and the reproduction or distribution of the work must include a notice of copyright.

Even if the prerequisites are met, though, the exception applies only in limited circumstances. For example, qualified libraries and archives are entitled to duplicate in facsimile form any (apparently unpublished) work for purposes of preservation and security. They can also make a copy to replace any damaged or missing work, but only if an unused copy cannot be obtained at a "fair" price.

Qualified libraries and archives are similarly entitled, in appropriate circumstances,9/ to reproduce and

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9/ The copy or phonorecord must become the property of the user and the library or archives must have no notice that the copy or phonorecord will be used for any purpose other than private study, scholarship, or research. Moreover, the library or archives must display prominently, at the place where orders are accepted, and include on its order form, a warning of copyright that comports with regulations to be promulgated in the future by the Register of Copyrights.

distribute upon request a copy of not more than one article or other contribution from a compilation (such as a periodical) or a copy or phonorecord of a small part of any other copyrighted work. Moreover, if the requested work cannot be obtained at a "fair" price they may copy the entire work. Isolated, spontaneous making of single copies by a library in a for-profit organization, without any systematic effort to substitute photocopying for subscriptions, appear to be protected by this provision, even though the copies are furnished to employees of the organization for use in their work. But a library in a profit-making organization is not authorized by this provision to use a single subscription to supply its employees with multiple copies, or to use a single subscription to supply its employees, on request, with single copies of material, where the arrangement is systematic in the sense of deliberately substituting copies for subscriptions or purchases.

In addition to the exemptions for what might otherwise constitute direct infringement, libraries and archives are

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Finally, the work being copied or reproduced cannot be a musical work, a pictorial, graphic or sculptural work (other than a pictorial or graphic work published as an illustration, diagram, or similar adjunct to works which can be so copied) or a motion picture or other audiovisual work (other than an audiovisual work dealing with news).

also generally exempt from vicarious liability for the unsupervised use of reproducing equipment located on the premises, provided they display a notice that the making of a copy may be subject to the copyright law. We should emphasize that this exemption is specifically limited to the library or archives; it does not extend to the person using such equipment or requesting such copy if the use exceeds fair use.

3. Ownership Rights in Lawfully Made Copies

Restating present law, another exception first authorizes anyone who owns a "particular copy or phonorecord lawfully made" to destroy it or transfer it to someone else. Then, it modifies the exclusive right to display publicly certain types of copyrighted work; any lawful owner of a copy of a work is granted the right to put his copy on public display without the consent of the copyright owner. It is a qualified right, though, because the privilege is extended only to displays presented either directly or by the projection of not more than one image at a time and to viewers present at the place where the copy is located. And again, this privilege would not apply to persons who have rented,

leased, borrowed, or otherwise obtained possession of the work without acquiring ownership of it. For example, a person who has rented a print of a motion picture from the copyright owner would appear to have no right to rent it to someone else for public display without the owner's permission.

4. Exempt Performances

Another exception in the new bill sets forth nine specific limitations to the exclusive rights of publicly performing and displaying copyrighted works. Four limitations are roughly equivalent to the "for profit" limitation on performing rights set forth under the present law. The fifth limitation authorizes the public playing of an ordinary receiving device unless a direct charge is made or the transmission "is further transmitted to the public." This provision is intended to ratify Twentieth Century Music Corp. v. Aiken, 422 U.S. 151 (1975) insofar as the Supreme Court in that case deemed permissible the use by a small commercial establishment of a home-type radio receiver for the enjoyment of its customers. The sixth limitation exempts certain performances of nondramatic music at nonprofit annual argricultural or horticultural fairs. The seventh limitation exempts the playing of records and tapes by retail

record stores to promote sales, and the last two limitations exempt performances for the handicapped under appropriate circumstances.

Describing the four limitations that are analogous to the present "for profit" clause in somewhat more detail, one limitation generally authorizes the performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institute, but only in a classroom environment. A second, complementary, limitation authorizes the performance of a nondramatic literary or musical work or display of a work by or in the course of a transmission, under similar educational criteria. 10/ The third limitation exempts the performance of nondramatic literary or musical works, or of dramatical-musical works of a religious nature, or the display of a work, in the course of religious services. The fourth limitation allows the performance of a nondramatic literary or musical work if there is no purpose of direct or indirect commercial advantage and if there is no payment of any fee or other

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10/ The second exemption, though, includes instructional activities of a governmental body as well as a nonprofit institution.

compensation for the performance. However, even then, the fourth limitation is applicable only if (1) there is no direct or indirect admission charge or (2) the proceeds, after deducting expenses, are used exclusively for educational, religious or charitable purposes and the copyright owner has not objected to such performance in writing.

In any event, these four limitations appear to apply only to public performances given directly in the presence of an audience; they do not sanction a "transmission" to the public.

5. Cable Television - Secondary Transmissions

The complex and economically important matter of secondary transmission[11/] is also treated in the bill as a

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11/ A primary transmission is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service.

A secondary transmission is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a "cable system" not located in whole or in part within the boundary of the forty-eight contiguous states, Hawaii, or Puerto Rico. However, a nonsimultaneous further transmission by a cable system located in Hawaii of a primary transmission is deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible

specific limitation to the broad grant of exclusive rights. For the most part, the secondary transmission provision deals with the operation of cable television systems (CATV) and the terms and conditions of their liability for the retransmission of copyrighted works. However, other forms of secondary transmissions are also dealt with, including apartment house and hotel systems, wired instructional systems, common carriers, nonprofit "boosters" and translators. In general, these other forms of secondary transmission are granted blanket immunity, subject to various conditions.

Now referring in detail to the statutory treatment of CATV, a compulsory copyright license is established for the retransmission of over-the-air broadcast signals that a CATV is authorized to carry by the FCC. The compulsory license is conditioned, however, on certain requirements and limitations. These include compliance with filing and periodic reporting requirements[12/], payment of the royalty fees established in

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under the rules, regulations, or authorizations of the Federal Communications Commission.

12/ Thus, at least one month before the commencement of operations, or within 180 days after the enactment of the instant act, whichever is later, a CATV must record in the Copyright Office a notice which, inter alia, identifies the ownership and location of the station. In addition, whenever the ownership or control of a CATV changes the cable system

the bill, a ban on the substitution or deletion of program content or commercial advertising[13/], and geographic limits on the compulsory license for copyrighted programs broadcast by Canadian or Mexican stations. Failure to comply with any of these conditions strips away the immunity of the compulsory license and renders the secondary transmitter amenable to a suit for copyright infringement.

In return for a compulsory license, the new law obligates each CATV to pay a royalty rate which varies

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must within 30 days record any such change in the Copyright Office.

Cable television systems whose secondary transmissions are subject to compulsory licensing must deposit with the Register of Copyrights a semiannual statement of accounts. In addition to such other information that the Register may prescribe by regulation, the statements of accounts are to specify the number of channels on which the CATV made secondary transmissions to its subscribers, names and locations of all primary transmitters whose transmissions were carried by the system including data necessary for the distant network equivalent computation (described infra), the total number of subscribers to the system, and the gross amounts paid to the system for the basic service of providing secondary transmissions.

13/ A research company who has obtained the permission of the advertiser, the primary transmitter and the secondary transmitter may alter, delete or substitute commercial advertisements if the changes are not performed for the purpose of deriving income from the sale of that commercial time.

according to its gross receipts. Systems receiving from subscribers gross receipts of less than $160,000 in any six month period pay a royalty of not more than $1200 for such period. Other systems pay a royalty which depends, in part, on the number of primary transmitters from which a CATV retransmits nonnetwork television programming beyond the local service area of the primary transmitter[14/], (known herein as the "distant signal equivalent" computation[15/]).

14/ The local service area of a primary transmitter, in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. The local service area of a primary transmitter in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

15/ A distant signal equivalent is generally computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial educational station from which a CATV carries nonnetwork programming. The distant signal equivalent charge is the sum of 0.675% of gross receipts for the first distant signal equivalent, 0.425% of gross receipts for each of the second, third and fourth distant signal equivalents, and 0.2% of gross receipts for each additional distant signal equivalent.

Specifically, the total royalty payment owned by a CATV having gross receipt in excess of $160,000 semiannually is the larger of (a) 0.675% of the system's gross receipts and (b) the distant signal equivalent computation.

The secondary transmission exemption, with one qualification, does not appear to permit a CATV, or any person, to tape or otherwise record a program off-the-air and later to transmit the program from the tape or record to the public. The one qualification involves systems located in Alaska or parts of Hawaii. However, another exemption, such as the ephemeral recording provision discussed infra, may otherwise justify such copying in appropriate circumstances.

Cable television systems whose secondary transmissions are subject to compulsory licensing must pay the royalty fees on a semiannual basis. The fees are to be deposited with the Register of Copyrights for subsequent distribution by a newly established agency known as the Copyright Royalty Tribunal ("Tribunal"). Claimants to a share of the CATV compulsory license royalty revenues are generally limited to copyright owners whose works were included in a secondary transmission made by a CATV of distant nonnetwork programs; no royalty fees may be claimed or distributed to

copyright owners for the retransmission of either local or network programs.

Each year during July, every person claiming to be entitled to share in the compulsory license fees must file a claim with the Tribunal. Notwithstanding any provisions of the antitrust laws, the claimants may agree among themselves as to the division and distribution of such fees. After the first day of August of each year, the Tribunal will determine whether a controversy exists as to the distribution of such royalty fees. If no controversy exists, the fees are distributed to the copyright owners. If, however, the Tribunal finds that there is a dispute over the money, it will conduct a proceeding to determine the proper distribution of the contested funds. At the same time, the Tribunal is empowered to distribute any amounts that are not in controversy.

6. Ephemeral Recordings

Another exception to the exclusive rights of copyright owners deals with ephemeral recordings -- copies or phonorecords of a work made for purposes of later transmission by a broadcasting organization legally entitled to transmit

the work. In general, a qualified and limited privilege is granted for recording the performance or display to facilitate its transmission. Governmental entities and certain nonprofit organizations are given somewhat greater freedom of activity in this regard than other broadcasting organizations.

7. Sound Recordings

Sound recordings constitute another subject that Congress has treated in the new act as a limitation on the five exclusive rights. In particular, the exclusive rights of the owner of a copyright in a sound recording are limited to reproducing the sound recording, preparing derivative works based on the sound recording, and distributing copies of the sound recording to the public. Furthermore, the statutory protection for sound recordings extends only to the particular sounds of which a recording consists, and would not prevent a separate recording of another performance in which those sounds are imitated. Indeed, mere imitation of a recorded performance would not constitute a copyright infringement even where one performer deliberately set out to simulate another's performance as exactly as possible. Finally, the new law strips the owners of sound recording copyrights of any recourse with regard to sound recordings included in

educational television and radio programs distributed or transmitted by or through public broadcasters, provided that copies or phonorecords of such programs are not commercially distributed by such broadcasters to the general public.

8. Recording Rights in Music

Compulsory licensing of phonorecords is also retained in the new act, although there are some departures from existing law. One apparent change is that compulsory licenses will not have to be made available until phonorecords of a nondramatical musical work have been "made and distributed to the public in the United States". Currently a license must be made available once a phonorecord is manufactured. Another change is that compulsory licenses, under the new legislation, can be obtained only if the "primary purpose" in making phonorecords of the person desiring the license is "to distribute them to the public for private use." This prevents a background music producer from making recordings without the express consent of the copyright owner. Finally, the compulsory license royalty rate is set at either 2 3/4 cents, or 1/2 of one cent per minute of playing time (or fraction thereof), whichever amount is larger. At present, the rate is 2 cents.

Licenses that have already been obtained under the present law will remain effective as to phonorecords embodying the same sound recordings, even after the new act goes into effect. Thereafter, though, any new "mechanical reproduction" would be subject to the higher rates.

9. Jukebox Exemption

An analogous compulsory license, revoking an outright exemption found in the present law, applies to coin-operated phonorecord players (jukeboxes). The new compulsory licensing provisions for jukeboxes are rather similar to those for phonorecords. One difference is that the compulsory license royalty rate for jukeboxes is to be computed on a per-box basis, at $8.00 per box per year. The procedure for distributing these royalties is analogous to the procedure described above for distributing CATV compulsory license royalties.

10. Public Broadcasting

The last specific limitation on the copyright owner's exclusive rights that we will discuss (which, incidentally, becomes effective some time prior to 1978) constitutes a grant

to public broadcasting entities of a compulsory license to use nondramatic literary and musical works, as well as pictorial, graphic, and sculputural works, in the course of transmissions by noncommercial, educational broadcast stations and subject to payment of "reasonable" royalty fees. Royalty rates are not specified by the statute; they are to be determined by the Tribunal after a ratemaking proceeding. And in any event, only copyright owners and public broadcasting entities that do not reach voluntary agreement are bound by the terms and rates established by the Tribunal.

Uses authorized by this compulsory license provision specifically include performance and display of the work by, or in the course of, a transmission by a public broadcasting entity. In addition, it is permissible to produce a transmission program, reproduce copies or phonorecords of the transmission program, and distribute such copies or phonorecords, if the activity is solely for the purpose of a transmission by a public broadcasting entity. Government bodies and nonprofit institutions are also authorized to make a reproduction simultaneously with the transmission of a public broadcasting program, if the reproduction is destroyed at the end of seven days from the date of transmission.

On the other hand, the reproduction authorized by this provision is limited solely to nondramatic musical works and pictorial, graphic and sculptural works included in public broadcasting transmissions. It does not extend to other works included in a transmission, or to the entire transmission program.

III. THE NEW SCHEME OF STATUTORY COPYRIGHT

A. The Duration of Copyright

Under the new law, all works created on or after January 1, 1978 are protected by statutory copyright from their "creation" -- that time when they are first fixed in a copy or phonorecord -- and will generally endure for a term consisting of the "life of the author and 50 years after the author's death." However, when more than one author creates a work (a "joint work"), this standard cannot directly be utilized. Accordingly, in joint works, the life-plus-50-year term applies, but the 50 year phase commences upon the death of the last survivor of the group of joint authors, no matter how many there are.

By contrast, when the author is not a natural person ("anonymous work," "pseudonymous work" or "a work made for hire") 16/ a special term is provided: 75 years from publication or 100 years from creation, whichever is shorter. However, the 75 and 100 year terms are automatically converted to the ordinary life-plus-50 term if the identity of one or more authors is revealed in special records that are to be maintained for this purpose in the Copyright Office. In such an instance, the term of copyright is based upon the life of the author or authors whose identity is so revealed.

The terms of currently existing copyrights are also adjusted by the new legislation. The act's basic approach is to increase the present 56 year total term (two 28-year terms) to 75 years, both in the case of copyrights subsisting in their first and in their renewal terms. All works presently in their first 28-year term must be renewed in accordance with

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16/ A work is anonymous if no natural person is identified as the author and is pseudonymous if the author is identified under a fictitious name. A work made for hire is (1) a work prepared by an employee within the scope of his employment or (2) a work specially ordered or commissioned for use in connection with other works if the parties expressly agree in writing that the work shall be considered a work made for hire.

the current renewal procedure.[17/] However, the renewal term will be for a period of 47 years. Renewed copyrights that are subsisting in their second term at any time between December 31, 1976 and December 31, 1977 will be extended automatically to run for a total of 75 years.

A final change in this area of copyright law is the introduction of year-end expirations, whereby copyright protection for a work will extend through December 31 of the year in which the copyright would otherwise have expired. This year-end provision, however, applies only to the computation of the duration of copyright.

B. Preemption of Common Law Copyright

Since the new legislation provides statutory copyright protection from the time a work is created, it concomitantly

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17/ A special situation arises where a first-term copyright becomes eligible for renewal during calendar year 1977. If renewal registration is made before January 1, 1978, the duration of the copyright is extended to the full period of 75 years without the need for a further renewal. If renewal registration has not been made by January 1, 1978, renewal for the second term can be made under the new law at any time between January 1, 1978, and December 31, 1978.

Any work in which an ad interim copyright is subsisting or capable of subsisting on December 31, 1977 is extended to endure for the full term provided in the new act.

modifies the current dual system of common law copyright for unpublished works and statutory copyright for published works. In particular, common law copyright protection is abrogated for works within the scope of the statute, regardless of whether they are published or unpublished, disseminated or undisseminated, or even, apparently, if a work is too minimal or lacking in originality to qualify for copyright protection under the federal statute.

Works currently protected by common law copyright are granted statutory copyright protection under the new legislation. The term for such works is generally life plus 50 years from creation. However, the act provides that, at a minimum, such copyrights shall not expire until December 31, 2002 and, if the work is published prior to January 1, 2003 (but after December 31, 1977), the term of copyright on a previously unpublished work shall not expire prior to December 31, 2027.

Four general areas are left unaffected by the preemption. These areas consist of: (1) subject matter that does not come within the subject matter of copyright, such as works that have not been fixed in any tangible medium of expression; (2) causes of action arising under state law

before January 1, 1978; (3) violations of rights that are not equivalent to any of the exclusive rights of the copyright as, for example, the rights of privacy, publicity and trade secrets, as well as the general laws of defamation and fraud; and (4) sound recordings fixed before February 15, 1972 (which are not protected even under the current federal copyright act). However, the preemptive provision will apply to such sound recordings after February 15, 2047.

IV. COPYRIGHT OWNERSHIP AND TRANSFER

The new act does not generally change established principles of federal law respecting ownership of copyright. It does, however, include the first explicit statutory recognition of the principle of divisibility of copyright in Unites States law. What this means is that any of the five exclusive rights which make up a copyright, and any subdivision thereof, can be tranferred and owned separately. Transfer of ownership may be accomplished by an assignment, mortgage, exclusive license or similar conveyance, whether or not it is limited in time or place of effect, but not by a nonexclusive license.

One of the most important revisions made in the area dealing with ownership results from the adoption of the single life-plus-50-year term of copyright. To safeguard authors against unremunerative transfers, under the present law, the renewal copyright reverts in certain situations to the author or his beneficiaries. The new statute, which eliminates the renewal feature as to works fixed on or after January 1, 1978, provides instead that a grant (whether exclusive or nonexclusive) may be terminated by the grantor during the five year period between 35 and 40 years from the execution of the grant. However, if the grant covers a right of publication of the work, the five year period begins at the end of 35 years from the date of publication of the work or at the end of 40 years from the date of execution of the grant, whichever term ends earlier. And while the effective date of termination is required to fall within the five years following the end of the applicable 35 or 40 year period, written advance notice must be served not less than two or more than ten years before the termination date.

Analogously, in the case of either a first-term or renewal copyright already subsisting when the new statute becomes effective, any grant of rights covering the renewal copyright in the work that was executed before the effective

date of the statute may be terminated under conditions and limitations similar to those described above. Grants relating to such copyrights can only be terminated, however, within a five year period beginning at the end of the two-term 56-year grant or as of January 1, 1978, whichever is later. Still, the notice of termination must be given two to ten years prior to the date of termination. And these time constraints mean that notice may have already been given in some instances.

This leads to the question of who can terminate a grant. Logically, in the case of a grant by a sole author, termination of the grant may be effected by that author or his legal successor. In the case of a grant signed by two or more joint authors, majority action by those who signed the grant or by their interests is required to terminate it. Nevertheless, upon termination the rights covered by the terminated grant revert to everyone who owns termination interests on the date the notice of termination was served, whether they joined in signing the notice or not. Majority action is thereafter required to make any further grant of reverted rights.

The initial grantee is given one advantage over third parties; he is authorized to negotiate a new arrangement with

the persons effecting the termination at any time after the notice of termination is served. By contrast, any other re-transfer of the rights that revert under a terminated grant is valid only if it is made after the effective date of the termination.

It should be noted that the legislation is not intended to extend the duration of a license, transfer or assignment made for a period of less than 35 years. It merely provides authors with the opportunity to terminate grants of longer duration. But if an agreement does exceed 35 years and the author fails to exercise the right of statutory termination, the license, transfer or assignment will continue in effect according to its terms.

The basic concepts of the present statute regarding execution and recordation of transfers are adopted in the new act. There are, though, a number of broadening and liberalizing provisions. Thus, any document pertaining to a copyright may be recorded at the Copyright Office if it bears the actual signature of a person who executed it or if it is appropriately certified as a true copy. Properly recorded documents will protect the transferee of a copyright or interest therein against a subsequent sale of the same

interest, by providing constructive notice of the transfer. However, the recorded document will give constructive notice of its contents only if two conditions are met: (1) the document or attached material must specifically identify the work to which it pertains, and (2) registration must have been made for the work. Moreover, a nonexclusive license evidenced by a written agreement, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the nonexclusive license was taken before execution of the transfer or before recordation of the transfer (if in good faith and without notice).

The new act also changes a common law doctrine under which authors or artists were generally presumed to transfer common law literary property rights when they sold their manuscript or work of art, unless those rights were specifically reserved. This presumption is reversed, since a written conveyance of copyright rights will in the future be required in order for a sale of any material object to carry with it a transfer of copyright.[18/]

18/ The distinction between ownership of copyright and ownership of a material object in which the copyright work is embodied is restated in the new act.

V. COPYRIGHT NOTICE, DEPOSIT AND REGISTRATION

A. Notice

After the effective date of the new copyright legislation, notice of copyright will be required whether a work is published in the United States or elsewhere. Publication is defined to include offers made to distribute copies or phonorecords to a group of persons for further distribution, public performance, or public display. However, no notice will be required in connection with the public performance or display of a copy of a work.

The form of copyright notice required by the new bill is comparable to notice under the present law. Somewhat greater flexibility will be allowed in the future, since the new statute requires merely that the notice be affixed in such manner and location as to give "reasonable notice of the claim of copyright," rather than defining appropriate locations with specificity. On the other hand, it requires somewhat more detail since the year of first publication will be necessary on all works except where a pictorial, graphic, or sculptural work is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys or any useful articles.

Furthermore, when copies or phonorecords consist "preponderantly of one or more works of the United States Government," the copyright notice will be required to identify those parts of the work in which copyright is claimed.

The new copyright legislation substantially ameliorates the harsh forfeiture rule that previously applied when notice of copyright was omitted or improperly applied to published works. Under the new act, public distribution of a work without the requisite copyright notice does not necessarily forfeit the copyright in the work. Rather, a work published without any copyright notice will still be subject to statutory protection for at least five years, whether the omission was partial or total, unintentional or deliberate.

If notice has been omitted from no more than a "relatively small number" of publicly distributed copies or phonorecords, or if notice has been omitted in breach of contract, the omission will have no effect on the copyright. Moreover, omission of notice from more than a "relatively small number" of copies can be cured by (1) registering the work with the Copyright Office within five years after the publication without notice and (2) making a reasonable effort, after discovering the error, to add notice to copies or

phonorecords distributed thereafter in the United States. Errors in name are generally of minor significance, while an omission of the date of first publication or affixation of a date which is actually more than a year subsequent to first publication is treated as if the notice had been entirely omitted. An earlier date is treated as if publication had first occurred on that date.

At the same time, the new legislation recognizes the unfairness of penalizing an innocent infringer who acted, for example, in reliance on the absence of notice. Therefore, one who proves that he was misled by the omission is shielded, in the discretion of the court, from liability for damages with respect to any infringing acts committed before the actor received actual notice of registration.

Lastly, since the notice requirements of the new statute are different from and in some respect more inclusive than those of the present statute, a transitional provision covers works first published before the effective date of the revised law. In particular, works first published prior to January 1, 1978 need only comply with the notice provision of the current copyright law, even subsequent to December 31, 1977.

B. Deposit

The deposit requirement represents another area of change. After January 1, 1978, a separate deposit must be made with the Library of Congress within three months after publication of a work with notice of copyright in the United States. Failure to comply with a demand for such deposit may result in a fine. Copyright registration is independent of this Library of Congress deposit provision, although it is possible under the new act to combine deposits for the Library of Congress with formal registration of copyright.

C. Registration

While registration of copyrights with the Copyright Office remains a voluntary procedure, the new act provides several inducements for registration. Thus, registration of copyright generally continues to be a prerequisite to suits for copyright infringement.[19/] Moreover, neither statutory

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19/ One exception is with regard to works that are fixed simultaneously with their transmission. In the case of such works, the copyright owner may, either before or after such fixation takes place, institute an action for infringement if registration is made within three months of the transmission and appropriate notice of intent to secure copyright in a transmission is given to the "infringer" not less than ten or

damages nor attorneys fees (discussed infra) can generally be recovered for infringements that occurred prior to registration. Another inducement is that the certificate of a registration made within five years after first publication of the work is deemed to constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. This may shift the initial burden in a lawsuit to the accused infringer. Finally, as noted earlier, recordation of a transfer of copyright ownership constitutes constructive notice only if the copyright has been registered.

VI. COPYRIGHT INFRINGEMENT AND REMEDIES

Also clarified in the new copyright act are the rights and remedies available for copyright infringement. The remedies generally include injunctive relief, impoundment and destruction of the infringing articles, costs and attorneys fees (all of which are discretionary with the court) and damages. Recovery of either (1) actual damages and profits or (2) statutory damages are now clearly alternative remedies that the copyright owner may elect. As a general rule, where a copyright owner elects statutory damages, the court is

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more than thirty days prior to the transmission.

obliged to award between $250 and $10,000, although it can exercise discretion in awarding an amount within that range. A single infringer of a single work is liable for statutory damages of between $250 and $10,000 no matter how many acts of infringement are involved in the action and regardless of whether the acts were separate, isolated, or occurred in a related series.

By contrast, where separate works and separately liable infringers are involved in a suit, the award of statutory damages must be appropriately multiplied. However, this does not appear to be true with respect to multiple copyrights, multiple owners, multiple exclusive rights, or multiple registrations. In such circumstances, statutory damages will not be multiplied. This point is especially important since, under a scheme of divisible copyright, it is possible to have the rights of a number of owners of rights in a single work infringed by one act of a defendant.

In exceptional cases, maximum statutory damages may be raised and minimum recovery may (or must) be reduced. The maximum recovery may be raised to $50,000, in the court's discretion, when willful infringement is proven. On the other hand, statutory damages may be reduced to $100 where the

infringer "was not aware and had no reason to believe that his or her acts constituted an infringement of copyright." Furthermore, the new statute provides that where a teacher, librarian, archivist, or public broadcaster, or the nonprofit institution of which they are a part, infringe copyrighted material in the honest belief that what they are doing constitutes fair use, the court is precluded from awarding any statutory damages.

A panoply of remedies for the alteration of programming by a cable television system are also provided in the statute. Four classes of plaintiffs are entitled to bring an action of this nature. Two classes of plaintiffs -- copyright owners and local broadcasters -- may seek the full array of available remedies for infringement: injuctions, impoundment, attorneys fees and damages. In addition, the court may decree that for a period not to exceed 30 days, the cable television system shall be deprived of the benefit of a compulsory license for one or more distant signals carried by the CATV. The two other classes of potential plaintiffs -- the distant-signal transmitter and other local stations -- are limited to seeking injunctions, attorneys fees, actual damages attributable to the act of altering program content, and the

new discretionary remedy suspending the infringer's compulsory license.

Another additional right in the new bill is that unauthorized importation, of itself, constitutes infringement if the copies or phonorecords have been acquired outside the United States. An unauthorized importer can be sued for damages and enjoined from making any use of the infringing works, even before any public distribution in this country has taken place. There are three specific exceptions to this right. First, importation by or for the use of a govermental body (not including materials for use in schools or copies of an audiovisual work imported for any purpose other than archival use) does not constitute infringement. Second, importation of no more than one copy is permitted for the private use of the importer. Finally, it is not an infringement for a nonprofit organization operated for scholarly, educational, or religious purposes to import no more than five copies or phonorecords for its library or for archival purposes, or one copy of an audiovisual work for its archival purposes.

VII. MANUFACTURING REQUIREMENTS IN IMPORTATION

The new copyright act purports to phase out[20/] the manufacturing clause as of July 1, 1982. Until then, most English language works imported into or distributed publicly in the United States which consist preponderantly of copyrighted nondramatic literary material are required to have been manufactured in the United States or Canada. There are, though, a variety of circumstances in which the manufacturing clause is inapplicable, even prior to that date.

Thus, it does not apply where the author of a substantial part of the material is neither a national[21/] nor a domiciliary of the United States. It does not apply when no more than 2,000 copies of a work are being imported. It does not apply when importation is sought under the authority or for use (other than in schools) of the government of the United States or of any state or political subdivision. It

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20/ Congress has requested that the Register of Copyrights review the impact that the elimination of the manufacturing clause would have on various U.S. industries. A report is due on July 1, 1981, so that it is still possible that the manufacturing clause will remain a permanent fixture in American copyright law.

21/ Alternatively, if the author is a national of the United States but has been domiciled outside of the country for more than a year preceding importation, the manufacturing clause does not apply.

does not apply in certain instances when the work is being imported for use by the importer and not for resale, or when the copies are reproduced in raised characters for use by the blind. Finally, it does not apply when: (1) the first publication of the work has previously taken place outside the United States under a transfer or license granted by the author (who must be an individual) to a transferee or a licensee who is not a national or domiciliary of the United States or a domestic corporation or enterprise; (2) there has been no publication of an authorized edition of the work of which the copies were manufactured in the United States; and (3) the copies being imported or publicly distributed were reproduced under a transfer or license granted directly or indirectly by such author, who has received compensation for the right to distribute the work in the United States, and the authorized reproducer was not a national or domiciliary of the United States or a domestic corporation or enterprise.

Importation or public distribution of copies in violation of the manufacturing clause prior to 1982 does not invalidate copyright protection for a work. However, an infringer who does comply with the manufacturing clause has a complete defense against a claim of copyright infringement

asserted by a copyright owner who has not complied with the manufacturing clause.

VIII. COPYRIGHT ROYALTY TRIBUNAL

As previously noted, a Copyright Royalty Tribunal is established in the new act. Its functions are periodically to review and adjust statutory royalty rates with respect to the four compulsory licenses provided by the legislation[22/] and to resolve disputes over the distribution of royalties from CATV and jukebox compulsory licenses.

The Tribunal, which came into being upon enactment of the new legislation as an independent agency in the legislative branch of the federal government, is to consist of five commissioners who will be appointed for staggered seven-year terms by the President with the advice and consent of the Senate. Final determinations by the Tribunal are reviewable by the United States Court of Appeals on the basis of the record before the Tribunal.

22/ The four statutory licenses deal with cable television systems, phonorecords, jukeboxes, and public broadcasting entities.

IX. CRIMINAL OFFENSES

Currently, persons who willfully infringe for profit are subject to criminal, as well as civil, sanctions. A convicted infringer can be punished by a fine of up to $1,000, imprisonment for not more than one year, or both. The new legislation continues to proscribe willful infringement for purposes of commercial advantage or private financial gain. Generally, it increases the maximum fine from $1,000 to $10,000, while it maintains the maximum term of imprisonment at one year. But special penalties apply when the infringed work is a sound recording.

In particular, when the criminally infringed work is a sound recording, the maximum fine for first offenders is $25,000. For any subsequent offense, the maximum fine increases to $50,000 and the maximum term of imprisonment doubles to two years. In addition, any person who knowingly transports, receives, sells, or offers to sell a phonorecord to which is affixed a forged or counterfeited label, for a first offense, can be fined as much as $10,000, imprisoned for not more than one year, or both. The fine ceiling is

increased to $25,000, and the potential term of imprisonment is doubled for subsequent offenses.

When any person is convicted of criminal infringement, in addition to the penalties noted-above, the court must order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing items.

Several other offenses are restated in the new legislation. On and after January 1, 1978, it will continue to be unlawful to affix fraudulent copyright notice to a work. So too, it will continue to be unlawful to fraudulently remove copyright notice. Finally, false representations of a material fact in an application for copyright registration will remain unlawful. Conviction of any of these three offenses will result in a fine of not more than $2,500.

X. SUPPLEMENTAL CONSIDERATIONS

Congress was concerned that some aspects of the new statute might tend to upset the delicate balance between the rights of creators and the needs of users. To alleviate these fears, the new legislation calls for periodic reports by the Register of Copyrights to Congress regarding the extent to

which certain statutory provisions have achieved their purposes. In addition, Congress left several matters open for future consideration when it passed the bill.

One topic of congressional concern was the long range effect of the exemption for reproduction by libraries and archives. Therefore, in 1982, and at five-year intervals thereafter, the Register is mandated to submit to Congress an evaluation of this exemption, after consulting with interested parties. Any problems that may have arisen, and proposed legislation or other recommendations shall be included in the evaluation. Another topic of concern was the compulsory license for public broadcasting. On January 3, 1980, the Register, again after consulting with interested parties, must submit a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works. Any problems that have arisen, and proposed cures, must be included in the report.

Performance rights in copyrighted material represents, in contrast, a matter that Congress did not include in the new bill, because it was felt that the issue required further study. Therefore, the Register is required to submit a report no later than January 3, 1978, after consulting with

interested parties, setting forth recommendations as to whether the statute should be amended to grant performers and copyright owners of copyrighted material any performance rights in the material.

Finally, the subject of design protection was also considered in the course of the copyright revision. However, it was omitted from the final version of the act at the insistence of the House of Representatives which, inter alia, explained that design protection "could not truly be considered copyright protection." This matter may nevertheless resurface in Congress in future years.

XI. CONCLUSION

The foregoing represents what we consider to be the main points of the new legislation. In view of the far-reaching effect of several of the new statutory provisions, the potential ramifications of the new bill should hereafter be considered in connection with all matters involving copyrights or copyrightable works.

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